HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 147 of 2005 (SS)

1. Budhi Ram s/o Sri Hira Lal
   Village Badeel, P.O. Madan Negi
   District Tehri Grhwal
2. Kirti Dutt s/o Tara t
   Village Jalwal Gaon, P.O. Madan Negi
   District Tehri Garhwal
3. Mangleshwar Prasad s/o Sri Mahanand
   Village Kuranima Gaon, P.O. Dharkot
   District Tehri Garhwal
4. Dhan Pal Singh s/o Surat Singh Rawat
   F-Block, 22/10 New Tehri,
   District Tehri Garhwal
5. Ajit Singh Rawat s/o Sri Suresh Singh Rawat
   Village F-Block 22/12 New Tehri
   District Tehri Garhwal ..... Petitioners

Versus

1. State of Uttaranchal
2. Chief Engineer Level-1, P.W.D.
   Dehradun
3. Chief Engineer, Garhwal Region,
   Pauri Garhwal
4. Superintendent Engineer, 27th Circle
   P.W.D. New Tehri
5. Executive Engineer, Nodal Khand
   Prantiya Khand, P.W.D.
   New Tehri (Baurari) ..... Respondents

Sri N.S. Pundir, Advocate for the petitioners
Standing Counsel for the respondents.

Dated: March 8, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri N.S. Pundir, counsel for the petitioners and Standing Counsel for the respondents.

By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents to regularise the service of the petitioners.

Briefly stated the petitioner was initially appointed as Beldar on daily wages in the Public Works Department in the year 1989. The petitioners have submitted that from time to time the persons working on daily wages employees were regularised by the department but the petitioners have not been considered. Consequent to the Government Order dated 3.1.2003 Chief Engineer Level-I Uttaranchal, P.W.D. Dehradun has issued a letter to all the Executive Engineers/ Nodel Officers on 25.1.2003, directing them to regularise all daily wagers working prior to 29.6.1991.

The petitioners have submitted that they preferred a joint representation on 28.3.2003 to the respondents but the respondents have not paid any heed to the request of the petitioners.

The respondents have filed counter affidavit and have submitted that the petitioners were working in the department since 1994 and they are not entitled to be regularized as per Government order dated 3.1.2003. The respondents have further asserted that the seniority list issued by the respondents in the year 1996, the names of the petitioners were wrongly shown to be working before 1990. However, the respondents have further submitted that enquiry in this connection was entrusted to the Executive Engineer, Temporary Division, Ghansali who submitted his enquiry report on 28.5.2003 and mentioned that the petitioners were engaged in the department after the year 1990. The relevant assertion of the respondents in the counter affidavit is quoted below:

"On receiving the complaint from the petitioners, the Superintending Engineer, 27th Circle PWD, New Tehri, the respondent No. 4 vide its letter No. 730/2 Ka. Pr./27/2002 dated 26.2.2003 had appointed the Executive Engineer, Temporary Division, Ghansali, who vide its letter no. 520/6E dated 28.5.2003 had submitted his enquiry report and find that the petitioners were engaged in the department as daily wager, after the year 1990."

The petitioners have filed rejoinder affidavit and filed copy of the seniority list of daily wagers issued by the department. The relevant extract of the seniority list is quoted below:

Name	Post	Date of Birth	Date of appointment	Presently working at
Mangleshwar Prasad	Beldar	1.8.1969	26.1.1989	Prantiya Khand, PWD, NewTehri
Budhi Ram	Beldar	1.9.1970	26.7.1989	-do-
Kriti Dutt	Beldar	1.9.1970	Aug. 1989	-do-
Dhan Pal Singh	Beldar	1.9.1970	21.12.89	-do-
Ajit Singh	Beldar	1.10.1971	21.12.1989	-do-

Thus the seniority list published by the respondents themselves shows that the petitioners were working since 1989 in daily wages, and thus they are entitled to be regularized under the relevant rules and Government orders.

The Government of Uttaranchal vide G.O. dated 3.1.2003 directed the Chief Engineer, P.W.D. to regularise all work charge employees and in their place to adjust all daily wager employees. The relevant extract of the G.O. is quoted below:

कार्य प्रभारित अधिष्ठान के सम्बन्ध में विभिन्न स्तरों से प्राप्त प्रत्यावेदनों एवं मॉगो को दृष्टिगत रखते हुए इस सम्बन्ध में शासन स्तर पर पुनः विचार किया गया और शासन स्तर पर सम्यक विचारोपरान्त पूर्व में निर्गत शासनादेश संख्या 7553/लो0नि.–2/2001–606 पीडब्लू डी/2001 दिनांक 10.12.2001 एवं शासनादेश संख्या 8214/लो. नि. 2/2001–606 पी0डब्ल्यू डी/2001 दिनांक 209.12.2001 को तत्कालिक प्रभाव से निरस्त करते हुए कार्य प्रभारित कर्मियों के विनियमितीकरण तथा उन कर्मियों द्वारा रिक्त किये गये पदों पर दैनिक वेतन भोगी कर्मियों को समायोजित किये जाने के सम्बन्ध में निम्नलिखित मार्ग दर्शक सिद्वान्त निर्धारित किये जाते हैं।

1. उत्तरॉचल राज्य में लोक निर्माण विभाग में कार्यरत कार्य प्रभारित वर्कचार्ज कर्मियों को नियमित पदों विरूद्व विनियमितीकरण हेतु लोक निर्माण विभाग उत्तरॉचल में दिनांक 29.6.91 अर्थात वर्कचार्ज पर नियुक्ति पर प्रतिबन्ध हेतु जारी कार्मिक विभाग उत्तर प्रदेश शासन के शासनादेश सं0 1009/का. 1/1991 दिनांक 29.6.91 से पूर्व नियुक्त ऐसे कार्य प्रभारित कर्मी जो अभी तक निरन्तर कार्य कर रहे हैं को विभाग में उपलब्ध रिक्त पदों क`सापेक्ष (स्थाई अथवा अस्थाई) निम्नलिखित प्रतिबन्धों के अधीन विनियमित करने की सहर्ष स्वीकृति प्रदान करते है।

9. कार्य प्रभारित अधिष्ठान में ऐसे कर्मी जो विनियमितीकरण के फलस्वरूप नियमित हो चुके हैं के द्वारा रिक्त किये गये पद पर वरिष्ठता के आधार पर 29.6.91 से पूर्व नियुक्ति एवं निरन्तर संतोषजनक कार्य करने वाले दैनिक वेतन भोगी कार्यरत कर्मियों को समायोजित किया जायेगा। दैनिक वेतन भोगी कर्मियों केा वरिष्ठता सूची उसी आधार पर निर्धारित की जायेगी जैसे कि कार्यप्रभारित कर्मियों की वरिष्ठता सूची निर्धारित करने हेतु उपरोक्तानुसार व्यवस्था दी गई है।

Thus it is incumbent upon the respondents to comply the order of the Government as well as the Chief Engineer Level-I, Uttaranchal and to regularise the service of the petitioner against the vacant posts in the Division concerned.

In view of the above, a writ of mandamus is issued directing the respondents to pass appropriate orders on the representation of the petitioners dated 28.3.2003 for

regularising the service of the petitioner within a month after obtaining the certified copy of this order.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 8.3.2006 **Rajesh Tandon, J.**

*Dhyani